

### **REMARKS**

Applicant has filed a continuation of application Ser. No. 09/219,682, filed Dec. 23, 1998, and abandoned the parent application. In the Final Office Action on 09/219,682 mailed 1/28/2004, the Examiner rejected claims 1 and 17 under 35 U.S.C. § 102, rejected claims 3, 19, and 33-38 under 35 U.S.C. § 103, and allowed claims 5-12, 16, 21-28, and 32.

Applicant now presents claims that correspond to the claims of application Ser. No. 09/219,682 at the time of the Final Office Action mailed 1/28/2004. The correspondence between the claims of this continuation, the claims of application Ser. No. 09/219,682, and the status of the claims at the time of the Final Office Action is as follows:

Continuation	Parent	Status
1	1	rejected under 35 U.S.C. § 102(e)
2	3	rejected under 35 U.S.C. § 103
3-11	5-12, 16	allowed
12	17	rejected under 35 U.S.C. § 102(e)
13	19	rejected under 35 U.S.C. § 103
14-22	21-28, 32	allowed
23-28	33-38	rejected under 35 U.S.C. § 103

### ***Summary of Telephonic Interview***

Applicant thanks the Examiner for the courtesy of a telephonic interview on February 24, 2004, and continued on February 25, 2004. The construction of the element "first factor" in claim 1 was discussed. The Examiner agreed that "first factor" had been construed as a factor responsive to the network conditions after the call was placed. The Examiner agreed that further consideration would be appropriate if applicant were to amend the claims to clearly claim the "first factor" as a factor set according to a predetermined minimum quality of service level requirement based on the destination of the telephone call.

### ***Rejection Under 35 U.S.C. § 102***

3. The Examiner rejected parent claims 1 and 17 under 35 U.S.C. § 102(e) as being anticipated by Cruickshank (US 6,389,005).

The Examiner asserts that Cruickshank discloses the processor ("*controller*") sets the threshold value ("*first factor*") based on the quality of service ("*minimum quality of service level*") by measuring parameters that depend on the destination of the telephone call.

Applicant has amended claims 1 and 17 to add the element of the first factor being set "according to a predetermined minimum quality of service level requirement based on the

destination of the telephone call" to make clear that the first factor is set as a threshold requirement against which the quality of service provided by the network is evaluated and not a factor based on the QoS provided by the network. The parent specification as filed discloses setting a QoS requirement according to call destination on page 10, lines 4-16 (paragraph [0023] of the continuation application).

Applicant respectfully requests that the Examiner not reject corresponding continuation claims 1 and 12 under 35 U.S.C. § 102(e) as being anticipated by Cruickshank.

***Rejection Under 35 U.S.C. § 103***

5. The Examiner rejected parent claims 3, 19, and 33-38 under 35 U.S.C. § 103(a) as being unpatentable over Cruickshank (US 6,389,005).

Applicant respectfully points out that this continuation application has a filing date after November 29, 1999, and therefore the provisions of 35 U.S.C. 103(c) are now applicable to the continuation application. Cruickshank and the present invention are commonly assigned to Nortel Networks limited. The subject matter of Cruickshank and the claimed invention were, at the time the invention was made, owned by the same person. Therefore Cruickshank does not preclude patentability under 35 U.S.C. § 103.

Applicant respectfully requests that the Examiner not reject continuation claims 2, 13, and 23-28 under 35 U.S.C. § 103(a) as being unpatentable over Cruickshank.

***Allowable Subject Matter***

7. Applicant notes with appreciation the Examiner's allowance of parent claims 5-12, 16, 21-28, and 32. These claims are presented as continuation claims 3-11 and 14-22.

***Conclusion***

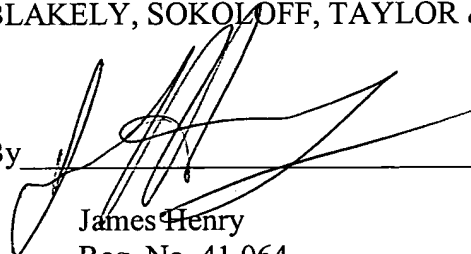
Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 03/26/2004

By



James Henry  
Reg. No. 41,064  
Tel.: (714) 557-3800 (Pacific Coast)